

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUSTIN HUDDLESTON

Claimant

VS.

C-HAWK CONSTRUCTION, INC.

Respondent

AND

FIREMAN'S FUND INSURANCE COMPANY

Insurance Carrier

Docket No. 219,234

ORDER

Claimant appeals from a preliminary hearing Order by Administrative Law Judge Floyd V. Palmer. The Order dated March 6, 1997, denied claimant's request for temporary total disability compensation and medical treatment. The Administrative Law Judge found that claimant's injuries resulting from a fight with a coworker did not arise out of and in the course of claimant's employment.

ISSUES

Did claimant's injuries arise out of and in the course of employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed. The evidence establishes that claimant was injured when a coworker dragged him out of a truck and wrestled him to the point where claimant fell and the coworker fell on him. Claimant offers no explanation for the event, and the record otherwise does not explain the motive.

The Appeals Board agrees with the conclusion by the Administrative Law Judge that the injury was not compensable as it does not fit any of the criteria for awarding benefits in the case of a fight between coworkers. First, the fight did not pertain to any condition or requirement of the job. Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 704 P.2d 394 (1985). The injury was not aggravated or exacerbated by some aspect of the work place. Baggett v. B & G Construction, 21 Kan. App. 2d 347, 900 P.2d 857 (1995). The event, as described, appears to have been horseplay not approved by the employer. The evidence does not establish that the respondent could have foreseen or anticipated the event. Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

WHEREFORE, the Appeals Board finds that the Order by the Administrative Law Judge Floyd V. Palmer, dated March 6, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Donald G. Strole, Lawrence, KS
Matthew J. Stretz, Kansas City, MO
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director